

ESTTA Tracking number: **ESTTA291276**

Filing date: **06/23/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	John E. Sylvester, Jr.
Granted to Date of previous extension	06/24/2009
Address	PO Box 48 Orr's Island, ME 04066 UNITED STATES
Party who filed Extension of time to oppose	JohnE.SylvesterJr.
Relationship to party who filed Extension of time to oppose	The changes are clerical only as the name as shown in extensions did not include appropriate spaces

Attorney information	Teresa C. Tucker Grossman Tucker Perreault & Pflieger PLLC 55 South Commercial Street Manchester, NH 03101 UNITED STATES ttucker@gttp.com Phone:603-668-6560
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Applicant Information

Application No	76690741	Publication date	02/24/2009
Opposition Filing Date	06/23/2009	Opposition Period Ends	06/24/2009
Applicant	CNL Income Bretton Woods, LLC 450 S. Orange Avenue 5th Floor Orlando, FL 32802 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 041. First Use: 1972/00/00 First Use In Commerce: 1972/00/00 All goods and services in the class are opposed, namely: entertainment services, namely, ski resorts featuring alpine skiing, freestyle skiing, Nordic skiing, snowshoeing, dog sledding, hiking, ice climbing, ice skating, snow tubing, sleigh rides, guided nature walks, lift rides, photo hiking, horseback riding, carriage rides, theatre productions, golf, tennis, swimming, biking, guided tours of the local sites, disc golf, fitness center and fishing; and educational services, namely, private, semi-private, group, and family instruction in skiing, snowboarding, golf, tennis, horseback and riding</p>
<p>Class 043. First Use: 1972/00/00 First Use In Commerce: 1972/00/00 All goods and services in the class are opposed, namely: Providing temporary accommodation services, namely, hotel, lodge, inn, and townhouses</p>

Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
The mark is primarily geographically descriptive	Trademark Act section 2(e)(2)
Other	the alleged mark was abandoned; Applicant's claim of acquired distinctiveness is unsupported by facts and should be stricken

Attachments	SKMBT_50009062309390.pdf (6 pages)(450428 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/tct/
Name	Teresa C. Tucker
Date	06/23/2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re Trademark Appln.		
Serial No.	76/690741)
Filed:	June 23, 2008)
Published in the Official Gazette of February 24, 2009)
Mark:	BRETTON WOODS)
Classes:	INT. 41 AND 43)
JOHN E. SYLVESTER, JR.)	
Opposer)	Opposition No.
)	
v.)	
)	
CNL INCOME BRETTON WOODS, LLC)	
Applicant)	
	*)	

NOTICE OF OPPOSITION

John E. Sylvester, Jr., an individual having a principal address of P.O. Box 48, Orr's Island, Maine, 04066, believes that he will be damaged by the registration of the geographic term "BRETTON WOODS" shown in Application Serial No. 76/690741, filed on June 23, 2008, by CNL Income Bretton Woods, LLC., and hereby opposes the same.

The grounds for opposition are as follows:

1. Bretton Woods is a geographic location, namely a village in the Town of Carroll, in the State of New Hampshire. The United States Postal Service has assigned Bretton Woods the unique zip code 03575.

2. Bretton Woods is the name given to a land grant made in 1772 by Royal Governor John Wentworth of New Hampshire. The grant was named after Bretton Hall, Wentworth's ancestral home in Yorkshire, England. Prior to becoming a part of the Town of Carroll in 1832, Bretton Woods was a discrete New Hampshire township. For more than 60 years, the Bretton Woods name has been inextricably linked to the International Monetary Conference held at the Mount Washington Hotel located at Bretton Woods in 1944.

3. Neither Applicant nor Applicant's predecessors in interest are the originators of the term "Bretton Woods." Today, land owned or effectively controlled by Applicant is estimated to be about 1800 acres, less than 6% of the original Bretton Woods grant. The largest single owner is the U.S. Forest Service, which owns in excess of 10,000 acres.

4. Opposer is in the business of land development and is the owner of a parcel of land abutting that owned by Applicant in Bretton Woods, New Hampshire. It is part of a Master Plan of Bretton Woods approved by the Town of Carroll more than 20 years ago. Opposer has owned his land for 25 years.

5. Opposer and others use the term Bretton Woods to indicate the location and names of commercial and residential properties, property developments and businesses located in Bretton Woods, New Hampshire. Within Bretton Woods, there are some 400 residences, several businesses two churches , and considerable undeveloped acreage owned by individuals and entities other than Applicant.

6. Opposer heavily relies on the term BRETTON WOODS in his business, including without limitation, the marketing of land and its proposed development. Opposer has an equal

right to use the term in connection with a number of proposed uses and services similar to and competitive with those described by Applicant.

7. On information and belief, on June 23, 2008 Applicant CNL Income Bretton Woods, LLC. filed an application with the United States Patent and Trademark Office for “BRETTON WOODS,” assigned Serial No. 76/690741, for “entertainment services, namely, ski resorts featuring alpine skiing, freestyle skiing, Nordic skiing, snowshoeing, dog sledding, hiking, ice climbing, ice skating, snow tubing, sleigh rides, guided nature walks, lift rides, photo hiking, horseback riding, carriage rides, theatre productions, golf, tennis, swimming, biking, guided tours of the local sites, disc golf, fitness center and fishing; and educational services, namely, private, semi-private, group, and family instruction in skiing, snowboarding, golf, tennis, horseback and riding” (as amended) in Class 41 and for “Providing temporary accommodation services, namely, hotel, lodge, inn, and townhouses,” (as amended) in Class 43.

8. Applicant’s application is based on its claim of use of the term in commerce since 1972. It includes a claim of acquired distinctiveness under Section 2(f) asserting that Applicant has made substantially exclusive and continuous use of the term in commerce for at least 34 years. However, since 1972, there have been nine different owners of that portion of Bretton Woods now controlled by Applicant. On two separate occasions within this period, resort operations and land development on Applicant’s property were halted by bankruptcy and foreclosures.

9. Applicant and others use the term “Bretton Woods” to identify the geographic location of their businesses. For example, Applicant’s own marketing materials use the term to designate the geographic area in which Applicant’s business is located, namely, the “MOUNT

WASHINGTON RESORT” at Route 302, Bretton Woods, NH 03575. The Appalachian Mountain Club’s Highland Center located in the Crawford Notch section of Bretton Woods offers recreational, hospitality and educational services at its 500 acre facility. Many other owners at Bretton Woods offer temporary accommodations and related services.

10. Applicant does not have the right to claim exclusivity in the term BRETTON WOODS because neither Applicant nor its predecessors used the term as a trademark.

11. Applicant does not have the right to claim exclusivity in the term BRETTON WOODS because any use that Applicant or its predecessors made of the term was neither exclusive nor continuous for any period of time prior to or subsequent to Applicant’s claim thereof.

12. On information and belief, Applicant, a Delaware Limited Liability Company, was formed on May 25, 2006.

13. Applicant’s claim of acquired distinctiveness by way of a “Declaration of Acquired Distinctiveness” executed (but not dated) by Tammie Quinlan, CFO and Executive Vice President of Applicant, states that Applicant has used the term BRETTON WOODS continuously and exclusively since 1972. It does not identify any other party as a predecessor in interest to the alleged rights in the term. Thus, the said declaration is materially false.

14. Applicant abandoned any trademark rights it may have had in the geographic term BRETTON WOODS by extended periods of non-use of the term, which caused the term to lose any significance as an indication of the origin of either Applicant’s or its predecessors’ goods and services.

15. Applicant abandoned any trademark rights it may have had in the geographic term BRETTON WOODS by way of one or more assignments in gross, apart from any good will, which caused the term to lose any significance as an indication of the origin of Applicant's or its alleged predecessors' goods and services.

16. Applicant's alleged use of the geographic term BRETTON WOODS as a trademark could not have commenced prior to formation of Applicant in 2006.

17. Numerous third parties have used the geographic term BRETTON WOODS as part of a property, business, service or trade name for many years including those years during which Applicant's alleged period of exclusive use occurred.

18. Applicant conceded that the term BRETTON WOODS is not inherently distinctive when Applicant made a claim of acquired distinctiveness under Section 2(f) in its Application but did not allege same in the alternative.

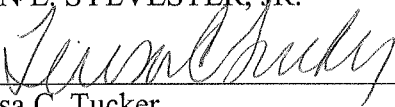
19. Opposer would be damaged by the registration sought by Applicant because, as applied to the sweeping services recited by Applicant, BRETTON WOODS is a descriptive, generic term. The registration would pose an economic threat to Opposer, its clients, assigns, and other members of the public providing services similar to those of the Applicant, since it would make possible harassment by litigation.

WHEREFORE, Opposer prays that application Serial No. 76/690741 be refused, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

RESPECTFULLY SUBMITTED this 23rd day of June, 2009.

JOHN E. SYLVESTER, JR.

By



Teresa C. Tucker

Attorney for Opposer

Grossman, Tucker, Perreault & Pfleger, PLLC

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CERTIFICATE OF SERVICE

It is hereby certified that a true and complete copy of the subject Notice of Opposition was served upon the Applicant via First Class mail, postage prepaid, this 23rd day of June, 2009 to the following address of Applicant's Attorney of Record:

Stephen M. Trattner, Esq.

Law Offices of Stephen M. Trattner

4626 Wisconsin Ave NW Ste 300

Washington DC 20016-4625

By:

